



November 2, 2000

Mr. William Krueger, III
Fletcher & Springer, L.L.P.
823 Congress Avenue, Suite 510
Austin, Texas 78701

OR2000-4280

Dear Mr. Krueger:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141120.

The Travis County Emergency Services District No. 9 (the "district"), which you represent, received a request for a copy of the agenda for each Board of Commissioners meeting held between July 1, 1998 and December 31, 1999; any notices of such board meetings if posted in a form other than in an agenda; and a copy of the minutes for each such board meeting. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You initially argue that the requested information is excepted from disclosure under section 552.103 of the Government Code. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

You inform us that the "information requested in the correspondence deals with information relating to civil litigation in Cause No. 99-14288; 201st Judicial District; Travis County; *Ashley A. Dean vs. Travis County Emergency Services District No. 9.*" On this basis, and without further argument, you claim that the information is therefore excepted under section 552.103. In Open Records Decision No. 638 at 4 (1996), this office found that to meet the second prong of section 552.103(a) exception, a governmental body must explain how requested information relates to the subject of litigation, and that simply referring to the cause number of a pending case does not establish that the requested information relates to that case. As you have made no demonstration as to how the requested information relates to the pending litigation, we conclude you have not met your burden under the litigation exception, and therefore you may not withhold the requested documents from the requestor under section 552.103 of the Government Code.

We next address your argument under section 552.101. Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. You argue that the minutes of any and all executive sessions are excepted from disclosure under the Public Information Act. In support, you assert that the "information sought to be protected deals with Minutes from Executive Session meetings," and that "[s]aid meetings are protected pursuant to §§551.071, 551.074, 551.075 and 551.084 of the Texas Government Code."

Sections 551.071, 551.074 and 551.075 authorize governmental bodies to hold executive sessions related to specific topics. Likewise, section 551.084 provides for the exclusion of witnesses in hearings conducted by a governing body. These provisions do not address the confidentiality of a certified agenda of an executive session. Section 551.103 of the Government Code requires governmental bodies to keep records of executive sessions in the form of a tape recording or certified agenda. Such records are available for public inspection only by order of a court. Gov't Code § 551.104(c). Therefore, the submitted certified agendas of executive sessions of the district's Board of Commissioners are confidential under section 551.104(c) of the Government Code, and thus must be withheld from disclosure under section 552.101. Open Records Decision No. 495 (1988). For your convenience, we have marked with green tags the information to be withheld from the requestor.

However, the fact that a subject was discussed in an executive session does not make information related to that discussion confidential. Open Records Decision Nos. 605 (1992), 485 (1987). Since we have concluded above that sections 551.071, 551.074, 551.075, and 551.084 are not confidentiality provisions, we conclude that the remaining information must be released to the requestor.

To conclude, the submitted information consisting of certified agendas of executive meetings of the district's Board of Commissioners must be withheld under section 552.101 of the

Government Code, in conjunction with section 552.104(c) of the Government Code. The remaining submitted information is not excepted under either section 552.101 or section 552.103, and must therefore be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Michael A. Pearle". The signature is fluid and cursive, with the first name "Michael" being more prominent than the last name "Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/pr

Ref: ID# 141120

Encl. Submitted documents

cc: Mr. Luis Martinez
Houston, Marek & Griffin
120 Main Place
Suite 600
Victoria, Texas 77901
(w/o enclosures)